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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 AMAZON.COM, INC.

10 Plaintiff,

11 v.

12 PHILIP MOYER, an individual,

13 Defendant.

)  
) No. C19-1176 RSM

)  
) STIPULATED PROTECTIVE  
) ORDER

14 The parties, by and through undersigned counsel, stipulate to and jointly request entry of  
15 the following protective order:

16  
17 1. PURPOSES AND LIMITATIONS

18 Discovery in this action is likely to involve production of confidential, proprietary, or  
19 private information for which special protection may be warranted. Accordingly, the parties hereby  
20 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties  
21 acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket  
22 protection on all disclosures or responses to discovery, the protection it affords from public  
23 disclosure and use extends only to the limited information or items that are entitled to confidential  
24 treatment under the applicable legal principles, and it does not presumptively entitle parties to file  
25 confidential information under seal.  
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2. “CONFIDENTIAL” AND “ATTORNEYS’ EYES ONLY” MATERIAL

“Confidential” material shall include information or documents that a party or third-party in good faith reasonably believe contains sensitive, non-public, private or confidential personal information the public disclosure of which would cause actual harm to a person’s reasonable expectation of privacy or is otherwise entitled to protection under the applicable Court rules.

“Attorneys’ Eyes Only” material shall include information or documents that a party or third-party in good faith reasonably believe contains constitute or include highly confidential information or material that is believed in good faith to be not only confidential, but also constitute trade secrets or commercial business information that could be used to the detriment of the producing party’s business, including without limitation pricing, profits, product development, customer feedback, competitive analysis, roadmap, strategies, marketing plans, operational plans, customers, and/or unreleased initiatives, products, services, features, and/or business deals.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material.

However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

4. ACCESS TO AND USE OF CONFIDENTIAL OR ATTORNEYS’ EYES ONLY MATERIAL

4.1 Basic Principles. A receiving party may use confidential or attorneys’ eyes only material that is disclosed or produced by another party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Confidential or attorneys’ eyes only material may be disclosed only to the categories of persons and under the conditions described in this agreement. Confidential or attorneys’ eyes only material must be

1 stored and maintained by a receiving party at a location and in a secure manner that ensures that  
2 access is limited to the persons authorized under this agreement.

3 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
4 by the court or permitted in writing by the designating party, a receiving party may disclose any  
5 confidential material only to:

6 (a) the receiving party’s counsel of record in this action, as well as employees  
7 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

8 (b) the officers, directors, and employees (including in house counsel) of the  
9 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
10 agree that a particular document or material produced is for attorneys’ eyes only and is so  
11 designated;

12 (c) experts and consultants to whom disclosure is reasonably necessary for this  
13 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

14 (d) the court, court personnel, and court reporters and their staff;

15 (e) copy or imaging services retained by counsel to assist in the duplication of  
16 confidential material, provided that counsel for the party retaining the copy or imaging service  
17 instructs the service not to disclose any confidential material to third parties and to immediately  
18 return all originals and copies of any confidential material;

19 (f) during their depositions, witnesses in the action to whom disclosure is  
20 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
21 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
22 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
23 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
24 under this agreement;

25 (g) the author or recipient of a document containing the information or a  
26 custodian or other person who otherwise possessed or knew the information.

1 5. DISCLOSURE OF ATTORNEYS' EYES ONLY INFORMATION

2 Disclosure of ATTORNEYS' EYES ONLY information or material (including any  
3 copies thereof, notes made therefrom, and the information contained therein) may be disclosed  
4 only to the following persons:

5 5.1 Outside counsel of record for the two parties in this litigation and  
6 employees or contract personnel retained by such attorneys' offices (such as secretaries, legal  
7 assistants, and document copying, coding, or imaging services) to whom it is necessary to  
8 disclose such information or material in furtherance of the prosecution or defense of this action,  
9 any mediator selected to mediate this matter, and any arbitrator selected to hear this matter.

10 5.2 The Court and its personnel, as necessary in support of motions, pleadings  
11 and other court papers and proceedings.

12 5.3 Court reporters and their assistants, to the extent reasonably necessary for  
13 reporting of depositions and hearings.

14 5.4 Experts retained by an attorney, but only to the extent that the expert, prior  
15 to receiving any ATTORNEYS' EYES ONLY information or material, has received a copy of  
16 this order and signed an agreement (in substantially the form presented in Exhibit A hereto)  
17 evidencing his or her intent to be bound by its terms, including his or her agreement not to  
18 divulge any ATTORNEYS' EYES ONLY information or material to any other person, his or her  
19 agreement not to use any ATTORNEYS' EYES ONLY information or material for any purpose  
20 other than this litigation, his or her consent to the jurisdiction and contempt power of this Court  
21 with respect to the enforcement of the order, and his or her agreement to return to the disclosing  
22 attorney within twenty (20) days after termination of this litigation (a) all documents and other  
23 material containing designated ATTORNEYS' EYES ONLY information and material received  
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1 by him or her and all copies thereof and (b) all reports, correspondence and other tangible things  
2 in his possession or control which contain any ATTORNEYS' EYES ONLY information or  
3 material disclosed to such expert.

4 6. FILING CONFIDENTIAL OR ATTORNEYS' EYES ONLY MATERIAL

5 Before filing confidential or attorneys' eyes only material or discussing or referencing such  
6 material in court filings, the filing party shall confer with the designating party, in accordance with  
7 Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove the  
8 confidential or attorneys' eyes only designation, whether the document can be redacted, or whether  
9 a motion to seal or stipulation and proposed order is warranted. During the meet and confer  
10 process, the designating party must identify the basis for sealing the specific confidential or  
11 attorneys' eyes only information at issue, and the filing party shall include this basis in its motion  
12 to seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets  
13 forth the procedures that must be followed and the standards that will be applied when a party  
14 seeks permission from the court to file material under seal. A party who seeks to maintain the  
15 confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B),  
16 even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in  
17 the motion to seal being denied, in accordance with the strong presumption of public access to the  
18 Court's files.

19 7. DESIGNATING PROTECTED MATERIAL

20 7.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
21 or non-party that designates information or items for protection under this agreement must take  
22 care to limit any such designation to specific material that qualifies under the appropriate  
23 standards. The designating party must designate for protection only those parts of material,  
24 documents, items, or oral or written communications that qualify, so that other portions of the  
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1 material, documents, items, or communications for which protection is not warranted are not swept  
2 unjustifiably within the ambit of this agreement.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
4 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
5 unnecessarily encumber or delay the case development process or to impose unnecessary expenses  
6 and burdens on other parties) expose the designating party to sanctions.

7 If it comes to a designating party's attention that information or items that it designated for  
8 protection do not qualify for protection, the designating party must promptly notify all other parties  
9 that it is withdrawing the mistaken designation.

10 7.2 Manner and Timing of Designations. Except as otherwise provided in this  
11 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or  
12 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
13 be clearly so designated before or when the material is disclosed or produced.

14 (a) Information in documentary form: (*e.g.*, paper or electronic documents and  
15 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),  
16 the designating party must affix the word "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY"  
17 to each page that contains confidential material. If only a portion or portions of the material on a  
18 page qualifies for protection, the producing party also must clearly identify the protected portion(s)  
19 (*e.g.*, by making appropriate markings in the margins).

20 (b) Testimony given in deposition or in other pretrial proceedings: the parties  
21 and any participating non-parties must identify on the record, during the deposition or other pretrial  
22 proceeding, all protected testimony, without prejudice to their right to so designate other testimony  
23 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the  
24 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or  
25 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information  
26 at trial, the issue should be addressed during the pre-trial conference.

1 (c) Other tangible items: the producing party must affix in a prominent place  
2 on the exterior of the container or containers in which the information or item is stored the words  
3 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY. If only a portion or portions of the  
4 information or item warrant protection, the producing party, to the extent practicable, shall identify  
5 the protected portion(s).

6 7.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
7 designate qualified information or items does not, standing alone, waive the designating party’s  
8 right to secure protection under this agreement for such material. Upon timely correction of a  
9 designation, the receiving party must make reasonable efforts to ensure that the material is treated  
10 in accordance with the provisions of this agreement.

11 8. CHALLENGING CONFIDENTIALITY OR ATTORNEYS’ EYES ONLY  
12 DESIGNATIONS

13 8.1 Timing of Challenges. Any party or non-party may challenge a designation of  
14 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality  
15 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
16 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
17 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
18 original designation is disclosed.

19 8.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
20 regarding confidential designations without court involvement. Any motion regarding confidential  
21 designations or for a protective order must include a certification, in the motion or in a declaration  
22 or affidavit, that the movant has engaged in a good faith meet and confer conference with other  
23 affected parties in an effort to resolve the dispute without court action. The certification must list  
24 the date, manner, and participants to the conference. A good faith effort to confer requires a face-  
25 to-face meeting or a telephone conference.  
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1           8.3     Judicial Intervention. If the parties cannot resolve a challenge without court  
2 intervention, the designating party may file and serve a motion to retain confidentiality under Local  
3 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
4 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
5 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on  
6 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain  
7 the material in question as confidential until the court rules on the challenge.

8     9.     PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
9     LITIGATION

10           If a party is served with a subpoena or a court order issued in other litigation that compels  
11 disclosure of any information or items designated in this action as “CONFIDENTIAL” or  
12 “ATTORNEYS’ EYES ONLY” that party must:

13                 (a)     promptly notify the designating party in writing and include a copy of the  
14 subpoena or court order;

15                 (b)     promptly notify in writing the party who caused the subpoena or order to  
16 issue in the other litigation that some or all of the material covered by the subpoena or order is  
17 subject to this agreement. Such notification shall include a copy of this agreement; and

18                 (c)     cooperate with respect to all reasonable procedures sought to be pursued by  
19 the designating party whose confidential material may be affected.

20     10.     UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

21           If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
22 material to any person or in any circumstance not authorized under this agreement, the receiving  
23 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,  
24 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the  
25 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,  
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1 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be  
2 Bound” that is attached hereto as Exhibit A.

3 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
4 MATERIAL

5 When a producing party gives notice to receiving parties that certain inadvertently  
6 produced material is subject to a claim of privilege or other protection, the obligations of the  
7 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision  
8 is not intended to modify whatever procedure may be established in an e-discovery order or  
9 agreement that provides for production without prior privilege review. The parties agree to the  
10 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

11 12. NON TERMINATION AND RETURN OF DOCUMENTS

12 Within 60 days after the termination of this action, including all appeals, each receiving  
13 party must certify the destruction of all confidential material to the producing party, including all  
14 copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate  
15 methods of destruction.

16 Notwithstanding this provision, counsel are entitled to retain archival copies of all  
17 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,  
18 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work  
19 product, even if such materials contain confidential material.

20 The confidentiality obligations imposed by this agreement shall remain in effect until a  
21 designating party agrees otherwise in writing or a court orders otherwise.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: August 22, 2019

/s/ Brad Fisher

3 Brad Fisher, WSBA #19895  
4 Zana Bugaighis, WSBA #43614  
5 Jordan Clark, WSBA #49659  
6 Davis Wright Tremaine LLP  
7 920 Fifth Ave, Suite 3300  
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11 Attorneys for Plaintiff Amazon.com, Inc.

12 DATED: August 22, 2019

/s/ Tyler Francis

13 Tyler P. Francis, WSBA #53533  
14 Angeli Law Group LLC  
15 121 SW Morrison Street, Suite 400  
16 Portland, OR 97204  
17 Tel: 503-954-2232  
18 Fax: 503-227-0880

19 Attorneys for Defendant Philip Moyer  
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1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
3 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or  
4 state proceeding, constitute a waiver by the producing party of any privilege applicable to those  
5 documents, including the attorney-client privilege, attorney work-product protection, or any other  
6 privilege or protection recognized by law.

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8 DATED this 23<sup>rd</sup> day of August 2019.

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11 RICARDO S. MARTINEZ  
12 CHIEF UNITED STATES DISTRICT JUDGE  
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare under penalty of  
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
6 issued by the United States District Court for the Western District of Washington on [date] in the  
7 case of \_\_\_\_\_ *Amazon.com, Inc. v. Moyer*, Case No. 2:19-cv-01176-RSM. I agree to  
8 comply with and to be bound by all the terms of this Stipulated Protective Order and I understand  
9 and acknowledge that failure to so comply could expose me to sanctions and punishment in the  
10 nature of contempt. I solemnly promise that I will not disclose in any manner any information or  
11 item that is subject to this Stipulated Protective Order to any person or entity except in strict  
12 compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the  
14 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective  
15 Order, even if such enforcement proceedings occur after termination of this action.

16 Date: \_\_\_\_\_

17 City and State where sworn and signed: \_\_\_\_\_

18 Printed name: \_\_\_\_\_

19 Signature: \_\_\_\_\_

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